83-1464

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

NO. _____

in the Supreme Court of the United States

October Term, 1983

Frances W. West,

Petitioner

vs.

The National Trust Company, as personal representative of the Estate of Albert C. West, deceased, and as Trustee for Elizabeth C. West, under Article V of the Will of Alfred C. West,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Attorneys for Petitioner

QUESTIONS PRESENTED

1. A CLAIM WAS TIMELY PRESENTED TO THE PROBATE COURT OF COLLIER COUNTY, FLORIDA BY PETITIONER HEREIN FOR THE MONTHLY PAYMENT OF $300.00 UNDER THE TERMS OF A PROPERTY SETTLEMENT AGREEMENT INCORPORATED IN A DIVORCE DECREE ENTERED ENTERED IN THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS AGAINST ALFRED C. WEST, NOW DECEASED AND REPRESENTED BY THE NATIONAL TRUST COMPANY. THE CLAIM INCORPORATED THE DECREE (INCLUDING THE PROPERTY SETTLEMENT AGREEMENT) OF THE ILLINOS COURT ENTERED OCTOBER 16, 1963. THE PROPERTY SETTLEMENT AGREEMENT PROVIDED THAT THE MONTHLY SUM (DESCRIBED AS "ALIMONY AND SUPPORT") SHALL BE PAID UNTIL THE FIRST OF THE FOLLOWING EVENTS SHALL OCCUR: (1) FRANCES' REMARRIAGE AND (2) THE DEATH OF FRANCES. NEITHER SUCH EVENT HAS OCCURRED. THE AGREEMENT ALSO PROVIDED THAT ALFRED PAY THE PREMIUMS AND MAINTAIN A GROUP LIFE POLICY NAMING FRANCES IRREVOCABLE BENEFIARY SO LONG AS SUCH SUPPORT PAYMENTS ARE DUE UNDER TERMS OF THE AGREEMENT. ALFRED LATER LEFT HIS THEN EMPLOYMENT AND THUS THE GROUP POLICY WAS NO LONGER EFFECTIVE AND, IN SUCH CASE, THE AGREEMENT PROVIDED "THAT ALL AMOUNTS DUE FOR ALIMONY AND SUPPORT DUE FRANCES, UNDER THE TERMS OF THIS AGREEMENT, SHALL BECOME A LIEN AGAINST ALFRED'S ESTATE."

SECTION 733.705(3) FLORIDA STATUTES PROVIDES THAT CLAIMANT FILE AN INDEPENDENT ACTION ON THE CLAIM WITHIN 30 DAYS AFTER THE FILING OF AN OBJECTION TO THE CLAIM. NO SUCH ACTION WAS FILED UNTIL SUBSEQUENT TO THE LOWER COURT'S RULING AS TO THE 30 DAY LIMITATION. SECTION 95.11 FLORIDA STATUTES PROVIDES TIME PERIODS WITHIN WHICH CERTAIN ACTIONS SHALL BE COMMENCED. THUS, 20 YEARS ON AN ACTION ON A JUDGMENT OR DECREE OF A COURT OF RECORD IN THIS STATE [FLORIDA]. UNDER SUBSECTION (2) AN ACTION SHALL BE COMMENCED WITHIN FIVE YEARS IN AN ACTION ON A JUDGMENT . . . OR ANY COURT OF THE UNITED STATES, ANY OTHER STATE OR TERRITORY IN THE UNITED STATES, OR FOREIGN COUNTRY.

THE DECEDENT WAS CURRENT IN HIS PAYMENTS UP TO THE TIME OF HIS DEATH. NATIONAL TRUST HAS NOT PAID A SINGLE DIME ON THE ILLINOIS JUDGMENT.

THE QUESTION THUS PRESENTED IS: DID THE FLORIDA COURTS THAT IS, THE TRIAL COURT, THE DISTRICT COURT OF APPEAL AND THE SUPREME COURT OF FLORIDA ERR IN REFUSING TO GIVE FULL FAITH AND CREDIT TO THE ILLINOIS JUDGMENT AS REQUIRED BY ARTICLE IV, SECTION 1 OF THE UNITED STATES CONSTITUTION?

2. ON THE FACTS STATED IN 1 PRECEDING, DOES A 30-DAY LIMITATION IN SECTION 733.705(3) FLORIDA STATUTES DENY DUE PROCESS OF LAW CONTRARY TO THE 14th AMENDMENT TO THE CONSTITUTION IN THAT THE PERIOD IS TOO SHORT AS RESPECTS A FOREIGN JUDGMENT?

3. DOES SECTION 733.705(3) FLORIDA STATUTES APPLY TO A JUDGMENT OF A FOREIGN STATE IN VIEW OF SECTION 95.11 FLORIDA STATUTES BEING A SPECIFIC STATUTE DEALING WITH PERFECTING A JUDGMENT ON A FOREIGN JUDGMENT?

4. DOES THE THE DISTRICT COURT OF APPEAL AND THE SUPREME COURT OF FLORIDA BY THE SIMPLE PROCESS OF AFFIRMING THE COURTS BELOW WITHOUT OPINION FORECLOSE REVIEW OF THE CONSTITUTIONAL ISSUE OF FULL FAITH AND CREDIT GUARANTEED BY ARTICLE IV, SECTION 1 OF THE UNITED STATES CONSTITUTION?

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are Frances W. West, Petitioner, and The National Trust Company as personal representative of the Estate of Alfred C. West, deceased, and as trustee for Elizabeth C. West as described in the caption to this proceeding.

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in the
Supreme Court
of the
United States
October Term, 1983

Frances W. West,

Petitioner

vs.

The National Trust Company, etc.

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

The Petitioner, Frances W. West, respectfully requests that a Writ of Certiorari be issued to review the determination of the Supreme Court of Florida which dismissed the petition for discretionary review of the action of the District Court of Appeal, Second District, affirming without opinion, the judgment of the trial courts in the consolidated cases dismissing the complaint filed in the Circuit Court of Collier County, Florida and also denying Petitioner's request that the court grant an extension within which to file a complaint

on the foreign judgment after the 30-day period of limitation contained in section 733.705(3) Florida Statutes had expired.

The decision of the Supreme Court dismissing the appeal for discretionary review on the ground that it had no jurisdiction because the District Court of Appeal "did not declare invalid a State Statute or a provision of the State Constitution" was entered December 6, 1983 and on December 30, 1983 a motion filed by Petitioner herein was treated as a motion for reinstatement and was denied.

JURISDICTION

The Supreme Court of Florida dismissed the appeal for discretionary review without opinion on December 6, 1983 and on December 30, 1983 denied a motion, treated as a motion for reinstatement. These orders appear in the appendix at pp. 1, 3. The Petitition for a Writ of Certiorari was filed within 90 days of that date. Court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 1 of the United States Constitution providing that each State shall give full faith and credit to the judicial proceedings of every other State.

Fourteenth Amendment to the United States Constitution (Due Process Clause).

See Appendix 23.

Florida Statutes:

§733.705(3) providing a 30-day period within which an independent action may be filed after an objection has been filed on a claim in the probate court. App. p. 11.

§95.11 Limitations other than for the recovery of real property.

(1) Within 20 years.—An action on a judgment or decree of a court of record in this State.

(2) Within five years—

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.

Article V, Section 3 of the Florida Constitution, subsection (b) Jurisdiction—The Supreme Court:

(1) Shall hear appeals from . . . decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

and,

subsection (b)3 "May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution. . . ."

See appendix p. 12 for text.

CONCISE STATEMENT OF THE CASE

Alfred C. West now deceased and Frances W. West (petitioner herein) both then resident in the State of Illinois were divorced by decree of the Superior Court of Cook County, Illinois (now the Circuit Court of Cook County) entered on or about October 16, 1963. Both parties were present and represented by independent counsel. Prior to the entry of the decree, a property settlement agreement was entered into which became a part of the decree, providing for the payment by Alfred C. West of $300 per month to Mrs. West beginning August 31, 1962, the date of the agreement, and thereafter until the first to occur of (1) Frances W. West's remarriage and (2) the death of Frances W. West. Neither such event has happened. Further, as part of said decree, Mr. West (the deceased) agreed to keep in force a group life insurance policy on his life in the amount of $40,000, and in the event he shall become ineligible to maintain the policy, any amounts due Mrs. West under the agreement shall become a lien on his estate. The monthly support payments were paid regularly by the decedent, the last of such payments being made on July 1, 1981. Mr. West died July 9, 1981.

Mr. West died a resident of Naples, Florida.

A claim for support payments was timely filed in the probate proceedings on July 21, 1981 and an objection to the to the claim was filed November 5, 1981. In Florida, the filing of an "objection" requires only the use of the word "objection" in the form to trigger the running of the 30-day period for the purpose of filing an independent action on the claim under §733.705(3) of the Florida probate code. The estate being administered

is not required to spell out its basis for the objection. On July 24, 1981 counsel for National Trust Company (National), the personal representative of the Estate of Alfred C. West, sent a letter to all children of Mr. West (the sole beneficiaries under his Will) explaining the claim for alimony. On November 20, 1981, a proposed settle was offered requiring Mrs. West's signature. A reply to this was made by counsel for Mrs. West on November 23, 1981. The offer of November 20, 1981 was mailed on November 23, 1981 to Mrs. West at her then address in Palm Springs, California. On January 29, 1982, counsel for National made certain inquiries as to the purport of Mrs. West's claim for support under the property settlement agreement and asserted for the first time, the language of §733.705(3) Florida Statutes and asserted that the claim was barred, but they nevertheless wanted to settle the matter. This was replied to on February 5, 1982 mentioning that the reference to §733.705(3) was inappropriate in view of the many conversations and correspondence on her claim.

On March 2, 1982, a formal offer in compromise of the claim for support was filed in the probate proceedings. An objection to the offer was mailed to the clerk of the probate division of the Circuit Court on March 10, 1982 together with notice to all interested parties. On May 7, 1982 without any discussion with counsel for Mrs. West, the offer in compromise was withdrawn and on June 28, 1982 an order was entered by the Probate Division of the Circuit Court approving the withdrawal. No mention was made that a hearing was set for June 21, 1982 on the pleadings relating to the offer. Before the order of June 28, 1982 was signed, counsel for Mrs. West was informed of the order of withdrawal and suit

was filed on the Illinois judgment on June 21, 1982. This action was dismissed with prejudice on September 30, 1982 because not filed within 30 days of the filing of an objection to the claim. Appendix 5 In Mrs. West's reply to the motion to dismiss the complaint, the opening paragraph of the Reply made appropriate reference to the constitutional argument that the Illinois judgment was entitled to the full faith and credit under Article IV, Section of the United States Constitution, citing *Morris v. Jones*, Director of Insurance of Illinois 349 U.S.545, 67 S.Ct.451 (1947). App. 9 Subsequently a petition to extend the time for filing an independent action against the estate was filed in the Circuit Court for Collier County, Florida and denied on January 6, 1983. Appendix 7 At no time did the trial court even discuss the application of the full faith and credit clause of the United States Constitution. Also, at no time in the consolidated appeals, that is, the dismissal of the independent action and the court's refusal to grant an extension of time within which to file and independent action on the Illnois judgment, did the trial courts or the District Court of Appeal or the Supreme Court of Florida consider the Constitutional question raised in the trial court and, of course, raised in each of the appeals. Although the District Court of Appeal permitted the issue of the applicability of §95.11 Florida Statutes (App. p. 12) to be raised, neither the District Court of Appeal nor the Supreme Court of Florida considered the section in these appeals, contenting themselves first, in the District Court of Appeals by affirming, without opinion, the order of the Circuit Court in the probate proceedings dismissing Mrs. West's claim for failure to file an independent action on the foreign judgment within the 30-day limitation of §733.705(3), and secondly, the judgment of the Circuit Court denying

Petitioner's petition for an extension of time within which to file an independent action on the foreign judgment, and then in the Supreme Court of Florida in dismissing the application for discretionary review for lack of jurisdiction, also without opinion. App. 1.

REASONS FOR GRANTING THE WRIT

It seems utterly incongruous to require one to file an action on a judgment already rendered to prove a claim in an estate proceeding, especially where there can be no collateral attack on the judgment or to which the estate could not possibly have an objection—the parties having participated in the Illinois proceedings resulting in the decree and the property settlement agreement made part of the decree, and the court having general jurisdiction over the subject matter.

As stated in *Morris v. Jones*, 329 U.S.545, 554, 67 S.CT. 451,457 (1947),

> "The single point of our decision is that the nature and amount of petitioner's claim has been conclusively determined by the Missouri judgment and may not be relitigated in the Illinois proceedings, it not appearing that the Missouri court lacked jurisdiction over either the parties or the subject matter."

There the liquidator as did the probate court in this proceeding declined to recognize the claim based upon the Missouri judgment (here the Illinois judgment) maintaining that the Missouri creditor (the Illinois creditor) must prove his claim on its merits, precisely as did local creditors. This requirement that a creditor prove his claim once an "objection" is filed, by an independent

action must to be sensibly construed, apply to a claim not based on an already existing judgment. In this case, Mr. West was current in his payments (some call it "alimony," but it really is a payment under the property settlement agreement. Eight days after the last payment he died. There was no occasion to file the foreign judgment in Florida under the "Registration of Foreign Support Orders" §88.321, .345, .351 and .371 Florida Statutes (App. 14) as he was current in his payments and there was no indication that he was about to die or that National as his executor (called "personal representative" in Florida) would totally ignore the foreign decree of which it had full knowledge, there being no problem of finances as the inventory in the estate indicated it had a value of $1,000,000 or more. Mrs. West's claim was peanuts in any valuation of the estate. Thus, National's harrassment in this case in any historical review of the case is difficult to understand. *Aldrich v. Aldrich et al*, 378 U.S. 540 (1964).

As respects the limitation in §733.705(3) of the Florida probate code of thirty days to file an independent action on the claim, this Court in the *Morris v. Jones* case, *supra*, observed:

> "It is no more important that the suit on the underlying claim could not be maintained in Illinois after the liquidator had been appointed than the fact that a statute of limitations of the State of the forum might have barred it." Citing *Christmas v. Russell*, 5 Wall. 290, 18 L.Ed.475; *Roche v. McDonald*, 275 U.S.449, 48 S.Ct.142, 77L.Ed.365, 53 A.L.R. 1141.

In *Krestaff v. Krestaff*, 79 Ill.App.2d 170 (1967) a Nevada divorce decree which made no provision for

alimony and did not reserve jurisdiction for later consideration of this question must be given full faith and credit under the United States Constitution Article IV, section 1 and does not authorize the Illinois court to modify the Nevada decree and award alimony. The finality and effect of the Nevada decree are determined by the law of Nevada. And, in Illinois the Illinois Appellate Court upheld the trial court's refusal to permit a foreign judgment debtor to assert defenses to the foreign judgment in Illinois: *Southern Bell Telephone & Telegraph Co. v. Woodstock, Inc.* 34 Ill.App.3d 86 (1975). In *Winland v. Winland*, 416 So.2d 520 (District Court of Appeal—Second District) 1982, an Ohio 1972 support order was barred by Florida's statute of limitations or laches, but a 1981 Ohio order for arrearages based on the 1972 order was not barred and must be given full faith and credit under the U.S. Constitution.

In a case somewhat similar to the present proceeding, a suit was filed to enforce a contract for the redemption of stock. The complaint was dismissed because it did not allege compliance with the probate claims statute. On appeal, the Florida District Court of Appeal, Fourth District reversed, holding that an allegation of compliance with the probate claims statute was not necessary and further, the cause of action set out in the complaint did not appear to come within the purview of the probate claim statute of Florida. *Lewis Marine Supply, Inc. v. Hurt*, 357 So.2d 252 (District Court of Appeal, Fourth District) 1978. In the present situtation, Petitioner here has filed a separate action in the Federal District Court, Southern District of Florida at Miami. Florida in docket No.82-2087 CIV-ALH to enforce the lien against the estate of Mr. West and his children as sole heirs of his estate. All amounts due under the property settlement

agreement are a lien against the estate of Mr. West. Concise Statement of the Case, herein at page 4. Numerous defenses to this claim have been raised including defenses to the merits of the judgment in Illinois. These are now pending on cross motions for summary judgment. We submit that a proceeding to enforce the lien is not within the purview of the probate code of Florida. So, also, as held by this Court in *Union National Bank v Lamb*, 337 U.S.38 (1949) where a Colorado judgment obtained in 1927 was revived in 1945. Suit was then brought in Missouri on the revived judgment in Colorado. The Supreme Court of Missouri though asssuming the judgment was valid in Colorado, refused to enforce it because the original judgment under Missouri's law could not have been revived in 1945. The Missouri Supreme held that the *lex fori* governs the limitations of actions and that the Full Faith and Credit Clause of the Constitution, Article IV, Section 1, did not require Missouri to recognize Colorado's more lenient policy of revival of Judgments. This Court held that *Roche v McDonald*, 275 U.S.449 (1928) was dispositive of the case stating that,

> ". . . once the court of the sister State had jurisdiction over the parties and of the subject matter its judgment was valid and could not be impeached in the State of the forum, even though it could not have been obtained there."

The fact that Florida judgments have a twenty-year period of limitation for their effectiveness under §95.11 Florida Statutes (App. 12) as against a five-year period for foreign judgments does not present an unconstitutional discrimination: *Watkins v Conway*, 385 U.S. 189. However, a period of limitations within

which an action on a foreign judgment may be commenced must be reasonable: *Bosich v. Skermetti et al*, (Miss. S.Ct. 1927) 112 So.385. Apart from the argument that the 30-day limitation of §733.705(3) Florida Statutes does not apply in this case in view of *Morris v. Jones*, supra, and *Lewis Marine Supply, Inc. v. Hurt*, supra, a 30-day limitation is patently too short in the case of a foreign judgment when applied in a probate proceeding. It contravenes the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Finally, we inquire—How can the State of Florida foreclose a constitutional question simply because the trial court, the District Court of Appeal and finally the Supreme Court of Florida do not directly pass upon the constitutional question raised at the outset of the case at the earliest possible moment of time in the proceedings?

The Florida Constitution, Article 5, Section 3(b)(1) provides in part for the jurisdiction of the Supreme Court and states that the Supreme Court: "Shall hear appeals from . . . decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

"2 . . .

"3 May review any decision of a district court of appeal that expressly construes a provision of the state or federal constitution, or . . ." Appendix page 18.

Rule 9.030 Rules of Appellate Procedure, confirms these constitutional provisions. Appendix p. 20.

The decisions of the trial courts in the consolidated cases on appeal to the District Court of Appeals necessarily held, without so deciding, the Constitutionality of §733.705(3) and the applicablity of Article IV, section 1 of the United States Constitution. This, it may have determined was without merit, or perhaps they just didn't want to put it in writing.

In *Department of Administration et al v. Mallory A. Horne et al*, Supreme Court of Florida, 269 So.2d 659 (1972) that Court held that where a trial court necessarily passed directly upon the validity of a state statute, an appeal would lie directly to the Supreme Court of Florida. So also held in *United Yacht Brokers, Inc. v. Gillespie* (DCA 4) 353 So.2d 574 (1977).

The District Court of Appeal for the Second District in *Mackenzie v. Hillsborough County*, 280 So.2d 694 (1973) held that where constitutional questions were involved, the cause would be transferred to the Supreme Court. A motion to this effect was filed in the Florida Supreme Court was denied, also without opinion. Appendix 2.

In *Buchman v. State Board of Accountancy*, (S.Ct.Fla 1972) 262 Fla. 198, the Court held that were the District Court necessarily determined that assertion of unconstitutionality was without merit, it effectively passed upon the constitutionality of the state statute so as to provide jurisdiction in this Court [the Florida Supreme Court].

In *Picchione v. Asti*, (DCA Third 1978) 354 So.2d 954, the Court held that had plaintiff raised question as to constitutionality of limitations statute on presentation

of claims against decedent's estate, proper appeal would have been to Supreme Court rather than District Court of Appeal. Admittedly, these cases construe the constitution of Florida before its amendment in 1980 as set forth above. However, the decisions are quite apposite in the light of the present constitutional provisions about "expressly declares" and "expressly construes."

CONCLUSION

It apparently is the policy of Florida to require claimants to prove their claims in independent actions in the circuit court (not in the probate court) and not to accept the judgments of sister States as an adjudication of the existence and amount of such judgment. This is evidenced by counsel for National during the course of the constitutional question raised in his interposition of defenses to the merits of the judgment, as by asserting that the judgment did not survive the decedent's life, or that alimony terminated on his death. Such a policy, when applied to sister state judgments, is, we submit, in direct conflict with the federal Constitution, Article IV, Section 1, and the decisions of this Court.

The question involved in this case is substantial, involving as it does the rights of Petitioner to the financial protection which the 1963 judgment afforded her and the intention of the decedent to protect her in the event of his death by the property settlement agreement. These rights were callously disregarded by National, indeed contemptuous of her rights. The principles here asserted are far reaching and of great importance and interest all over the United States and will decide a question that is bound to arise again and is bound to come sooner or later before the Supreme Court of the United States.

Thus, for the reasons set forth, the Petitioner prays this Court issue the Writ of Certiorari.

Respectfully submitted,

Peter B. Atwood
Atwood and Richmond
1994 Thatch Palm Drive
Boca Raton, Florida 33432
Attorneys for Petitioner

March, 1984

Appendix

IN THE SUPREME COURT OF FLORIDA

TUESDAY, DECEMBER 6, 1983

CASE NO. 64,587

District Court of Appeal,
2d District — Nos. 82-2432
83-44

FRANCES W. WEST,

Appellant,

vs.

THE NATIONAL TRUST COMPANY, ETC.,

Appellee.

It appearing to the Court that the District Court of Appeal, Second District, did not declare *invalid* a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion *filed* within fifteen (15)

days from the data of this order. See Article V, Section 3(b) (I), Florida Constitution.

C

cc: Hon. William A. Haddad, Clerk
Hon. William J. Reagan, Clerk
Hon. William J. Nelson, Judge
Hon. Charles T. Carlton, Judge

Peter B. Atwood, Esquire
Thomas B. Garlick, Esquire
of Harter, Secrest & Emery

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: /s/ Debbie Causseaux
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

FRIDAY, DECEMBER 30, 1983

CASE NO. 64,587

District Court of Appeal,
2d District – Nos. 82-2432
83-44

FRANCES W. WEST,

Appellant,

vs.

THE NATIONAL TRUST COMPANY, ETC.,

Appellee.

On consideration of the Motion to consider appeal to District Court of Appeal as improvidently filed and to transfer cause from District Court Appeal, Second District, to the Supreme Court of Florida, and the response thereto,

IT IS ORDERED by the Court that said motion is treated as a motion for reinstatement and is hereby denied.

C

cc: Hon. William A. Haddad, Clerk
Hon. William J. Reagan, Clerk
Hon. William J. Nelson, Judge
Hon. Charles T. Carlton, Judge

Peter B. Atwood, Esquire
Thomas B. Garlick, Esquire
and Timothy R. Parry, Esquire
of Harter, Secrest & Emery

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: /s/ Debbie Causseaux
Deputy Clerk

[Filed 10-12, 1982]

IN THE CIRCUIT COURT OF THE TWENTIETH
JUDICIAL CIRCUIT
COLLIER COUNTY, FLORIDA

CIVIL ACTION

CASE NO. 82-1172-CA-01

FRANCES W. WEST

Plaintiff

vs.

THE NATIONAL TRUST COMPANY as Personal Representative of the Estate of Alfred C. West, Deceased and Trustee for Elizabeth Carpenter West under Article V of the Will of Alfred C. West, Deceased

Defendant

ORDER AND JUDGMENT DISMISSING COMPLAINT WITH PREJUDICE

This cause came on to be heard on September 13, 1982, on the motion of the Defendant to dismiss the complaint of the Plaintiff, with prejudice, upon the ground that the Plaintiff has failed to comply with the limitation of time provided for the commencement of this action pursuant to Florida Statute 733.705, and the Court having read the Motion to Dismiss of the Defendant and the Affadavit and Exhibits annexed thereto, and the Reply to Defendant's Motion submitted by the

Plaintiff, and the Exhibit annexed thereto, and having heard arguments of counsel, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED, that the motion of the Defendant be and it is hereby granted, and it is further

ORDERED AND ADJUDGED, that the Complaint of the Plaintiff be and it is hereby dismissed, with prejudice.

DONE AND ORDERED, in Chambers at Naples, Collier County, Florida, this 30 day of Sept., 1982.

/s/ William J. Nelson
HONORABLE WILLIAM J. NELSON
CIRCUIT JUDGE

[FILED JAN 6 '83]

IN THE CIRCUIT COURT FOR
COLLIER COUNTY, FLORIDA

PROBATE DIVISION

CASE NO. 81-341-CP-02-CTC

IN RE:

ESTATE OF ALFRED C. WEST

ORDER

This cause came on to be heard on December 28, 1982 on the Petition of Frances W. West, Claimant, for an Order extending her time to file suit on two claims against the Estate of Alfred C. West which were first filed on July 21, 1981, and timely objected to by the Personal Representative on November 5, 1981. The Court having read the Petition of Frances W. West and the Answer to Petition of The National Trust Company, as Personal Representative of the Estate of Alfred C. West, and having heard arguments of counsel, and being otherwise fully advised, it is

ORDERED AND ADJUDGED, that Frances W. West, Claimant, has failed to show "good cause" for an extension of time to file suit under Florida Statute 733.705, and it is further

ORDERED AND ADJUDGED, that the Petition of Frances W. West be, and it is hereby, denied in all respects.

DONE AND ORDERED, at Naples, Collier County, Florida this 6th day of January, 1983.

/s/ Charles T. Carlton
HON. CHARLES T. CARLTON
Circuit Judge

cc: Peter B. Atwood, Esq.
William H. Myers, Esq.
Joseph Harrison, Esq.
Thomas B. Garlick, Esq.

IN THE CIRCUIT COURT OF
THE TWENTIETH JUDICIAL CIRCUIT
COLLIER COUNTY, FLORIDA

Civil Action

Case No. 82-1172-CA-01

FRANCES W. WEST

Plaintiff

vs

THE NATIONAL TRUST COMPANY, as Personal Representative of the Estate of Alfred C. West, Deceased and as Trustee for Elizabeth Carpenter West under Article V of the Will of Alfred C. West, Deceased

Defendant

Reply to Defendant's Motion to Dismiss Complaint.

General:

The Claim to which the Estate of Alfred C. West (the Estate) has asked this Court to dismiss is based upon an order of of the Circuit Court of Cook County, Illinois in divorce proceedings. This decree, made a part of the Complaint herein is entitled to the full faith and credit of this Court under Article IV, section 1 of the Constitution of the United States. The judgment as obtained in 1963, and, as stated in *Morris v. James*,

Director of Insurance of Illinois (1947) 329 U.S. 545, 67 S.Ct. 451, 456,

". . . That determination is final and conclusive in in all courts. 'Because there is a full faith and credit clause a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment." (Citing cases)

"For the Full Faith and Credit Clause established 'throughout the federal system and salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered". Id., 320 U.S. at page 439, 64 S.Ct. at page 214, 88 L.Ed.149, 150A.L.R. 413. And see Riley v. New York Trust Co., 315 U.S. 343, 348, 349, 62 S.Ct. 608, 612, 86 L.Ed.885. The nature and amount of petitioner's claim may not, therefore, be challenged or retried in the Illinois proceedings."

". . . In any event the Missouri judgment is res judicata as to the nature and amount of petitioner's claim as against all defenses which could have been raised." (Citing cases)

* * *

Florida Statutes:

733.705 Payment of and objection to claims

(1) No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 4 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 4 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice of administration, a personal representative or other interested person may file a written objection to any claim. An objection filed to an unmatured claim matures it for the purpose of bringing an action on it. If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail to the address of the claimant as shown on the claim or delivery to the claimant to whose claim he objects or [the claimant's] attorney of record, if any, not later than 10 days after it has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. Failure to serve a copy of the objection constitutes an abandonment of the objection.

(3) The claimant shall be limited to 30 days from the date of service of an objection within which to bring an independent action upon the claim. For good cause, the court may extend the time for filing an

objection to any claim or the time for serving the objection, and may likewise extend the time for filing an action or proceeding after objection is filed. The extension of time shall be granted only after notice. No action or proceeding shall be brought against the personal representative after the time limited above. If an objection is filed to the claim of any creditor and an action is brought by the creditor to establish his claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

(4) No interest shall be paid by the personal representative or allowed by the court on a claim until the expiration of 4 calendar months from the first publication of the notice of administration unless the claim is founded on a written obligation of the decedent providing for the payment of interest. Interest shall be paid by the personal representative on written obligations of the decedent providing for the payment of interest. On all other claims, interest shall be allowed and paid beginning 4 months from the first publication of the notice of administration.

(5) The court may determine all issues concerning claims or matters not requiring trial by jury.

* * *

95.11 Limitations other than for the recovery of real property

Actions other than for recovery of real property shall be commenced as follows:

(1) Within twenty years.—An action on a judgment or decree of a court of record in this state.

(2) Within five years.—

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument.

(c) An action to foreclose a mortgage.

(3) Within four years.—

(a) An action founded on negligence.

(b) An action relating to the determination of paternity.

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 15 years

after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his employer, whichever date is latest.

(d) An action to recover public money or property held by a public officer or employee, or former public officer or employee, and obtained during, or as a result of, his public office or employment.

(e) An action for injury to a person founded on the design, manufacture, distribution, or sale of personal property that is

* * *

PART IV. REGISTRATION OF FOREIGN SUPPORT ORDERS

88.321 Additional remedies

1. In general

A Uniform Reciprocal Enforcement of Support Act order rendered pursuant to this chapter is not the exclusive means in which outstanding child support payments may be collected. Op.Atty.Gen., 077-77, July 26, 1977.

88.345 Official to represent petitioner

If this state is acting either as a rendering or a registering state, the prosecuting attorney upon the request of the court or the Department of Health and Rehabilitative Services shall represent the petitioner in proceedings under this part.

Added by Laws 1979, c. 79-383, § 36, eff. Oct. 1, 1979.

88.351 Registration procedure; notice

(1) A petitioner seeking to register a foreign support order in a circuit court of this state shall transmit to the clerk of the circuit court:

(a) Three certified copies of the order with all modifications thereof;

(b) One copy of the reciprocal enforcement of support act of the state in which the order was made; and

(c) A statement, verified and signed by the petitioner, showing the post office address of the petitioner, the last known place of residence and post office address of the respondent, the amount of support remaining unpaid, a description and the location of any property of the respondent available upon execution, and a list of the states in which the order is registered.

88.371 Effect of registration; enforcement procedure

(1) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(2) The respondent has 25 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the respondent may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment and matters concerning a substantial change in the circumstances for the parties relating to the obligation of support. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the respondent has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the respondent furnishes the same security for payment of the support ordered that is required for a support order of this state.

Amended by Laws 1979, c. 79-383, § 38, eff. Oct. 1, 1979.

Laws 1979, c. 79-383, amended chapter 88 to conform the 1955 Uniform Reciprocal Enforcement of Support Act to the 1968 revised act.

Florida Constitution Article V.

SECTION 3. Supreme court.—

(a) ORGANIZATION.—The supreme court shall consist of seven justices. Of the seven justices, each appellate district shall have at least one justice elected or appointed from the district to the supreme court who is a resident of the district at the time of his original appointment or election. Five justices shall constitute a quorum. The concurrence of four justices shall be necessary to a decision. When recusals for cause would prohibit the court from convening because of the requirements of this section, judges assigned to temporary duty may be substituted for justices.

(b) JURISDICTION.—The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and

directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

(5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

(7) May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

(8) May issue writs of mandamus and quo warranto to state officers and state agencies.

(9) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

Rules of Appellate Procedure

Rule 9.030. Jurisdiction of Courts

(a) Jurisdiction of Supreme Court.

(1) ***Appeal Jurisdiction.***

(A) The Supreme Court shall review, by appeal:

(i) final orders of courts imposing sentences of death;

(ii) decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(B) When provided by general law, the Supreme Court shall review:

(i) by appeal final orders entered in proceedings for the validation of bonds or certificates of indebtedness;

(ii) action of statewide agencies relating to rates or service of utilities providing electric, gas or telephone service.

(2) ***Discretionary Jurisdiction.*** **The discretionary jurisdiction of the Supreme Court may be sought to review:**

(A) decisions of district courts of appeal that:

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;

(v) pass upon a question certified to be of great public importance;

(vi) are certified to be in direct conflict with decisions of other district courts of appeal;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the Supreme Curt, and:

(i) to be of great public importance, or

(ii) to have a great effect on the proper administration of justice;

(C) questions of law certified by the Supreme Court of the United States of a United States Court of Appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida.

(3) *Original Jurisdiction.* The Supreme Court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction;

and may issue writs of mandamus and quo warranto to state officers and state agencies. The Supreme Court or any justice may issue writs of habeas corpus returnable before the Supreme Court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

(b) Jurisdiction of District Courts of Appeal.

(1) *Appeal Jurisdiction.* District courts of appeal shall review, by appeal:

(A) final orders of trial courts not directly reviewable by the Supreme Court or a circuit court;

(B) non-final orders of circuit courts as prescribed by Rule 9.130(a)(3);

(C) administrative action when provided by general law.

(2) *Certiorari Jurisdiction.* The certiorari jurisdiction of district courts of appeal may be sought to review:

(A) non-final orders of lower tribunals other than as prescribed by Rule 9.130;

(B) final orders of circuit courts acting in their review capacity.

(3) *Original Jurisdiction.* District courts of appeal may issue writs of mandamus, prohibition, quo warranto, common law certiorari and all writs necessary to the complete exercise of the courts; jurisdiction; or any

judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof, or before any circuit judge within the territorial jurisdiction of the court.

* * *

Constitution of the United States:

ARTICLE IV—STATES—RECIPROCAL RELATIONSHIP BETWEEN STATES AND WITH UNITED STATES

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Amend. 14

AMENDMENT XIV—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 28 U.S.C.

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

1. . . .

2. . . .

3. By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

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MAR 9 1984
ALEXANDER L. STEVAS,
CLERK

NO. 83-1464

in the

Supreme Court

of the

United States

October Term, 1983

Frances W. West,

Petitioner

vs.

The National Trust Company, as personal representative of the Estate of Albert C. West, deceased, and as Trustee for Elizabeth C. West, under Article V of the Will of Alfred C. West,

Respondent

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Attorneys for Petitioner

Supplemental Appendix

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

SECOND DISTRICT

Case Nos. 82-2432
83-44

CONSOLIDATED

FRANCES W. WEST,

Appellant,

v.

THE NATIONAL TRUST COMPANY, as personal representative of the Estate of ALFRED C. WEST, Deceased, and as Trustee for ELIZABETH C. WEST, under Article V of the Will of ALFRED C. WEST, Deceased,

Appellee.

Opinion filed November 9, 1983

Appeal from the Circuit Court for Collier County; William J. Nelson and Charles T. Carlton, Judges.

Peter B. Atwood of Atwood and Richmond, Boca Raton, for Appellant.

Thomas B. Garlick of Harter, Secrest & Emery, Naples, for Appellee.

PER CURIAM.

Affirmed.

RYDER, A.C.J., DANAHY and LEHAN, JJ., Concur.

83-1464

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FILED
APR 9 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1464

In The

Supreme Court of the United States

October Term, 1983

FRANCES W. WEST,

Petitioner,

vs.

THE NATIONAL TRUST COMPANY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ALFRED C. WEST, DECEASED, AND AS TRUSTEE FOR ELIZABETH C. WEST, UNDER ARTICLE V OF THE WILL OF ALFRED C. WEST, DECEASED

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONDENT'S BRIEF IN OPPOSITION

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In The

Supreme Court of the United States

October Term, 1983

FRANCES W. WEST,

Petitioner,

vs.

THE NATIONAL TRUST COMPANY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ALFRED C. WEST, DECEASED, AND AS TRUSTEE FOR ELIZABETH C. WEST, UNDER ARTICLE V OF THE WILL OF ALFRED C. WEST, DECEASED

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Contrary to assertions found in the Petition for a Writ of Certiorari, this Appeal does not present questions of "great importance and interest all over the United States", nor does the Appeal involve a denial of due process or the failure to give Full Faith and Credit to a foreign judgment. As will be seen below, this Appeal only involves the failure of Petitioner to comply with an applicable provision of Florida's probate laws governing the presentation of claims against a decedent's estate. Accordingly, the Petition for a Writ of Certiorari to the Supreme Court of Florida should be denied.

Following the death of Alfred C. West, on July 9, 1981, the Circuit Court for Collier County, Florida accepted for probate the decedent's Last Will and Testament. Respondent, the National Trust Company, as Personal Representative of Mr. West's Estate, caused a Notice of Administration to be published on August 6, 1981. Prior to publication of the Notice of Administration, Petitioner Frances W. West caused a claim to be filed with the same Circuit Court on July 21, 1981. Petitioner's claim included a demand for monthly alimony and support payments which had been awarded to her pursuant to an Illinois divorce decree entered by the Superior Court of Cook County, Illinois on October 16, 1963. On November 5, 1981, Respondent filed a timely objection to Petitioner's claim and served Petitioner with a copy in accordance with Florida Statute 733.705(2).[1] The filing of the objection by the Respondent matured Petitioner's claim for the purposes of bringing an independent action upon the

[1] Respondent's objection to claim was filed on the basis that in both Florida and Illinois an obligation to pay alimony dies with the person who has the obligation unless he expressly agrees to bind his estate to continue alimony payments after his death. *O'Malley v. Pan American Bank of Orlando*, 384 So 2d 1258 (Fla. 1980); *Aldrich v. Aldrich*, 163 So 2d 276 (Fla 1964); *Cross v. Cross*, 5 Ill 2d 456 (1955) citing *Lennahan v. O'Keefe*, 107 Ill. 620; *Cooper v. Cooper*, 350 Ill. App. 37. Neither the Illinois divorce decree nor the property settlement agreement incorporated therein evidences an intent on the part of Mr. West to have his estate continue making monthly alimony payments. The only reference in the decree to Mr. West's estate is in a provision which obligated Mr. West to maintain a group life insurance policy on his life for $40,000 naming Petitioner beneficiary, and "in the event Alfred (Mr. West) shall become ineligible to maintain said Group Insurance, any amounts for alimony and support *due* (emphasis added) Frances (Petitioner), under the terms of this Agreement, shall become a lien against Alfred's (Mr. West's) estate...." Mr. West left his employment and became ineligible under the terms of the group life insurance policy. However, at the time of death, there were no support payments due Frances (Petitioner) since the minor child of the marriage had reached her majority in 1979. Further, Petitioner acknowledges at page 4 of her petition that Mr. West's alimony payments were never in arrears. Thus, there could be no claim and/or lien to impose against Mr. West's estate.

claim, and Petitioner thereafter was limited to 30 days from the date of service of the objection to commence a suit. Thus, Petitioner had until December 5, 1981, in which to file an independent action upon her claim.

On June 22, 1982, more than seven months after the date of service of Respondent's objection to Petitioner's claim, and more than six months after the December 5, 1981, deadline for commencement of an independent action as required by Florida Statute 733.705(3), Petitioner commenced her first action in the Circuit Court of Collier County, Florida, (Case No.82-1172, *West v. National Trust Company, et al.*, Appeal No. 82-2432).[2] The independent action of Petitioner sought to recover alimony from the Estate based upon the foreign divorce decree entered in the State of Illinois in 1963.

Respondent answered Petitioner's Complaint by raising five affirmative defenses which challenged the procedural and substantive merits of Petitioner's Complaint, including the defense of the bar of Florida Statute 733.705(3). Thereafter, Respondent moved to dismiss the Complaint in the Circuit Court, Collier County, upon the ground that Petitioner failed to comply with the mandatory provisions set forth in Florida Statute 733.705(3). On September 13, 1982, the Circuit Court granted Respondent's

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[2] On March 2, 1982, prior to the commencement of Petitioner's suit and after the December 5, 1981 deadline for commencement of a suit, Respondent filed a Petition to Compromise Petitioner's claim pursuant to Florida Statute 733.708. (See Respondent's Appendix at p. A-2). The petition was filed in an effort to settle petitioner's claim against the estate even though petitioner's claim was now barred by Florida Statute 733.705(3). Regrettably, negotiations with petitioner's counsel broke down and the petition to compromise was withdrawn with approval by the Circuit Court. It is important to note that although settlement negotiations had transpired between Respondent and Petitioner's counsel, Petitioner was not relieved of her responsibility to comply with all applicable provisions of Florida's probate laws including Florida Statute 733.705 (3). See *First Bank and Trust Co. of Jacksonville v. Bush*, 226 So. 2d 438,440 (Fla.1st DCA 1969); and *In Re Kemp's Estate*, 177 So 2d 757, 762 (Fla. 1st DCA 1965).

Motion to Dismiss Petitioner's Complaint with prejudice, and an Order and Judgment was subsequently entered by the Court on October 12, 1982. (See Petitioner's Appendix at p.5).

On September 24, 1982, Petitioner petitioned the Circuit Court, Probate Division, for an Order extending the time within which to file an independent action upon her claim, even though the independent action previously filed in the Circuit Court for Collier County had been dismissed with prejudice. On January 6, 1983, the Circuit Court, Probate Division, denied Petitioner's Motion for an Extension of Time within which to file an independent action on her claim as required by Florida Statute 733.705(3). (See Petitioner's Appendix at p. 7). Petitioner subsequently appealed each Order to the District Court of Appeal of Florida, Second District of Florida. Following the consolidation of the Appeals, the District Court of Appeal of Florida, Second District, rendered a per curiam opinion, dated November 9, 1983, affirming the Orders of the Collier County Circuit Court. (See Peitioner's Supplemental Appendix at p. 25). Petitioner subsequently filed a Notice of Appeal to the Supreme Court of Florida and petitioned that Court to exercise its discretionary jurisdiction to hear her appeal. By separate Orders dated December 6, 1983, and December 30, 1983, the Florida Supreme Court dismissed Petitioner's Appeal to that Court for want of jurisdiction and refused to grant Petitioner's Motion for Reinstatement of her Appeal. (See Petitioner's Appendix at pp. 1 and 3).

SUMMARY OF ARGUMENT

Petitioner seeks to enforce a claim for future alimony payments against the Estate of Alfred C. West. Said claim arises out of a divorce decree entered by the Superior Court of Cook County, Illinois in 1963. Mr. West died a resident of the State of Florida. Accordingly, Mr. West's estate, and all claims filed therewith, are subject to Florida's Probate laws governing the administration of estates.

Florida Statute 733.705 sets forth the procedure for the filing of an objection to claim and for the resolution of claims to which an objection has been filed. The latter provision provides that a claimant "shall be limited to 30 days from the date of service of an objection within which to bring an independent action upon the claim." If a party fails to comply with the limitation of time provided by this Statute, the claim will be barred.

Petitioner filed her claim against Mr. West's estate on July 21, 1981. Thereafter, Respondent, as Personal Representative of Mr. West's estate, filed a Notice of Objection on November 5, 1981, and served a copy of the same upon Petitioner's counsel as required by Florida Statute 733.705. Petitioner subsequently failed to commence an independent action on her claim until June 22, 1981, more than six months after the December 5, 1981 deadline for commencement of an action. Accordingly, Petitioner's claim is barred.

The existence of Petitioner's Illinois divorce decree did not, a fortiori, establish a valid claim against Mr. West's estate nor did the decree preclude the Florida Courts from reviewing the decree in order to determine if the decedent's estate was obligated to continue making monthly alimony payments. Thus, in following the provisions of Florida Statute 733.705, the lower state courts did not refuse to give Full Faith and Credit to the Illinois divorce decree.

Under Florida law a claimant has three months in which to present a claim following the first publication of the Notice of Administration, plus thirty days after an objection is filed in which to bring an action on the claim. Such a procedure reasonably contributes to the just, speedy and inexpensive administration of estates. Petitioner was fully aware of her rights and obligations under the Florida Probate laws, having filed a Statement of Claim shortly after Mr. West's death. Petitioner ignored or chose to ignore the applicable provisions of Florida Statute 733.705 and allowed nearly seven months to expire before com-

mencing a suit upon her claim. Accordingly, the application of Florida Statute 733.705's bar to Petitioner's claim did not operate to abridge Petitioner's due process rights under the Fourteenth Amendment to the United States Constitution.

The lower state courts committed no error in reviewing the procedural merits of Petitioner's suit to enforce her claim. Petitioner was permitted to raise consititutional arguments involving the applicability of Florida Statute 733.705 to her claim and the lower court decisions, by implication, rejected the same.

Lastly, there currently is pending, before the United States District Court, Southern District of Florida, a suit by Petitioner to enforce her claim for future alimony payments against the estate of Alfred C. West. Accordingly, Respondent submits that this action is not ripe for review by this Court.

ARGUMENT

I. IN FOLLOWING THE PROVISIONS OF FLORIDA STATUTE 733.705(3), THE LOWER FLORIDA COURTS DID NOT REFUSE TO GIVE FULL FAITH AND CREDIT TO PETITIONER'S ILLINOIS DIVORCE DECREE IN VIOLATION OF ARTICLE IV, SECTION 1 OF THE UNITED STATES CONSTITUTION.

A. *Petitioner Failed To Comply with Florida Statute 733.705.*

In order to facilitate the orderly administration of estates, Florida has enacted, inter alia, Florida Statute 733.705, which sets forth a procedure for both the payment of and objection to claims. In addition, this Statute limits the time in which a claimant may commence an independent action upon a claim to which a written objection has been filed. The applicable provisions of this Statute are as follows:

733.705 - *Payment of and Objection To Claims.*

(1) No personal representative shall be compelled to pay the debts of the Decedent until after the expiration of four months from the first publication of Notice of Administration....

(2) On or before the expiration of four months from the first publication of Notice of Administration, a personal representative or other interested person may file a written objection to any claim. An objection filed to an unmatured claim matures it for the purpose of bringing an action on it. If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail to the address of the claimant as shown on the claim or delivery to the claimant to whose claim he objects or the claimant's attorney of record, if any, not later than ten (10) days after it has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. Failure to serve a copy of the objection constitutes an abandonment of the the objection.

(3) The claimant shall be limited to 30 days from the date of service of an objection within which to bring an independent action upon the claim. For good cause, the court may extend the time for filing an objection to any claim or the time for serving the objection, and may likewise extend the time for filing an action or proceeding after the objection is filed. The extension of time shall be granted only after notice. No action or proceeding shall be brought against the personal representative after the time limited above...

If a claimant fails to comply with the limitations of time set out above, any suit filed on the claim will be barred. *Poncier v. State Department of Health and Rehabilitative Services*, 284 So. 2d, 463 (Fla. 3rd DCA, 1973); *Michael's School of Dance, Language & Charm, Inc., v. Broward National Bank of Ft. Lauderdale*, 320 So.2d. 413 (Fla. 4th DCA 1975), and *S. J. Landau v. Estate of Riesner*, 372 So.2d 1134 (Fla. 2nd DCA 1979).

As noted previously, on November 5, 1981 Respondent timely filed and served upon Petitioner, a Notice of Objection to Petitioner's claim for alimony payments. Petitioner either ignored or chose to ignore the limitations set forth in Florida Statute 733.705(3). Moreover, Petitioner failed to establish good cause

for granting Petitioner an extension of time in which to file an action, said request not having been filed with the Circuit Court for Collier County until September 24, 1982. Accordingly, the lower circuit court, by separate Orders, properly dismissed Petitioner's independent action filed against Respondent on June 22, 1982, and denied Petitioner's Motion for an Extension of Time within which to file an independent action on its claim. (See Petitioner's Appendix at pp. 5 and 7).

B. *The Decisions of the Lower State Courts Do Not Conflict with Applicable Decisions of this Court.*

Petitioner cites this Court's decision in *Morris v. Jones*, 329 U.S. 545, 67 S. Ct. 451 (1947), in support of her argument that Florida Statute 733.705(3) is not applicable to her claim against the Estate of Alfred C. West. The facts in *Morris v. Jones* are easily distinguishable from those presented herein. In *Morris v. Jones*, the nature and amount of the claimant's claim against an insurer had been determined by a competent court of the State of Missouri. The Illinois Supreme Court refused to recognize the adjudication of the claim in the State of Missouri and instead reasoned that only Illinois had the power to adjudicate claims against the insolvent insurer. On appeal, this Court reversed the Illinois Supreme Court and held Illinois must give full faith and credit to the adjudication of a claim against the insurer by the Missouri courts.

In the instant appeal, Petitioner's claim did not arise until subsequent to the death of Alfred C. West, and the question of whether or not the Illinois decree's alimony provisions survived the decedent's death had not been litigated or determined. Indeed, an examination of the property Settlement Agreement incorporated in the decree reveals the absence of any provision which calls for the decedent's estate to continue making monthly alimony payments.[3]

[3] See fn. 1 *infra*.

Petitioner erroneously assumes that the existence of her divorce decree, in and of itself, constitutes a valid claim against the Decedent's estate, which cannot be reviewed or examined by the courts of the State of Florida. Such an argument misconstrues the requirement of the Full Faith and Credit clause as announced by this Court. In *People of the State of New York, ex rel. Halvy v. Halvy*, 330 U.S. 610, 91 L.Ed.1133 (1947), this Court noted that while the full faith and credit clause requires that the judgment of a sister state be given full credit in the State of the forum, the "judgment has no constitutional claim to a more conclusive or final effect in the State of the forum than it has in the State where rendered." 330 U.S. at 614, 91 L.Ed. at 1136. The latter construction was aptly explained by Justice Frankfurter, in his concurring opinion also rendered in *People of the State of New York, ex rel. Halvy v. Halvy:*

> The constitutional policy formulated by the full faith and credit clause cannot be fitted into tight little categories or too abstract generalities. That policy was the nationwide restriction of litigiousness, to the extent that States, autonomous for certain purposes, should not be exploited to permit repetitive litigation. In substance, the Framers deemed it against the national welfare for a controversy that was truly litigated in one state to be relitigated in another. *Such limitation does not foreclose inquiry into what was litigated and what was adjudicated* (emphasis added). 330 U.S.at 616, 91 L. Ed. at 1137

The existence of the Illinois divorce decree did not, a fortiori, establish a legitimate claim for alimony payments thereby rendering Florida Statute 733.705 (3) inapplicable, nor did the decree preclude the Florida Circuit Court from reviewing the decree in order to determine whether alimony obligations contained therein survived the death of Mr. West. Clearly, Petitioner has misconstrued the meaning of the Full Faith and Credit Clause.

Other cases cited by Petitioner are equally distinguishable. In *Aldrich v. Aldrich*, 378 U.S.540, 12 L.Ed. 2d 1020 (1964), this Court reversed the decision of the Supreme Court of West Vir-

ginia which had erroneously refused to give full faith and credit to a Florida divorce decree. The Florida decree expressly ordered a Defendant spouse to pay alimony and provided that upon the death of the spouse, the monthly alimony payment shall become a charge upon the decedent's estate. Because neither West Virginia nor Florida permitted an alimony obligation to survive a Decedent's death,[4] the West Virginia Supreme Court refused to recognize the Florida divorce decree. On appeal, this Court reversed that State Court's decision and held the Florida divorce decree must be given full faith and credit in West Virginia. In *Roche vs. McDonald*, 275 U.S. 449, 72 L.Ed. 365 (1928), also cited by Petitioner, this Court reversed a decision of the Washington Supreme Court which had refused to recognize a Judgment obtained by the Petitioners in the State of Oregon on the ground that had the Judgment been obtained in Washington, the Judgment would have been invalid due to a shorter State Statute of limitations. This Court held that the full faith and credit clause prohibits a State from refusing to recognize the validity of a another state's judgment because said judgment does not comport with the forum state's own policies. Similarly, in *Union National Bank of Wichita v. Lamb*, 337 U.S. 38, 93 L.Ed. 1190 (1949), another case cited by Petitioner, this Court reversed the decision of the Missouri Supreme Court which had refused to recognize a Judgment obtained by the Petitioner in the State of Colorado. The Petitioner obtained a Judgment in Colorado in 1927 and later revived the Judgment in Colorado in 1945. Missouri, on the other hand, required its judgments to be revived within ten years of the date the judgment was first issued. The Missouri Supreme Court reasoned that had the Petitioner attempted to revive the Judgment in Missouri, the Judgment would have been invalid due to that State's ten year limitation on judgments. In reversing

[4] Although the obligation against the decedent's estate was contrary to Florida law, no appeal from the trial court's decision was taken by the decedent and this Court concluded that under Florida law, the decree must stand. 378 U.S. at 543, 12 L.Ed 2d at 1023.

the Missouri Supreme Court, this Court stated that the full faith and credit clause prohibits a State from refusing to recognize a judgment obtained in another state on the ground that the foreign judgment was obtained by a procedure inconsistent with the policies of the forum state.

As can be seen from the above-discussion, each of the cases cited by Plaintiff is distinguishable from the instant appeal. The State of Florida has not refused to give full faith and credit to a foreign judgment. Moreover, Florida Statute 733.705 neither denies nor abridges the rights of Petitioner to seek to enforce her foreign judgment. The latter Statute simply enacts a procedure to be followed for the enforcement of Petitioner's rights, which Petitioner chose to ignore at her peril.[5] Accordingly, this Court should not grant Petitioner its request for a Writ of Certiorari as there has been no violation of the full faith and credit clause of the U.S.Constitution.

II. THE APPLICATION OF FLORIDA STATUTE 733.705(3) TO PETITIONER'S CLAIM AGAINST THE ESTATE OF ALFRED C. WEST DID NOT ABRIDGE PETITIONER'S DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

As an alternative argument, Petitioner baldly asserts that Florida Statute 733.705(3)'s 30-day limitation in which to commence an action upon a claim violates the due process clause of the

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[5] In failing to comply with Florida Statue 733.705 (3), Petitioner violated a rule of judicial procedure applicable to the filing of claims against an estate. See *In Re Jeffries' Estate*, 136 Fla. 410, 181 So. 833 (1938) and *In Re Goldman's Estate*, 79 So. 2d 846 (Fla. 1955),[(cases construed Florida Statute 733.18(2), predecessor to Florida Statute 733.705(3).] Such a rule, like any rule of civil or appellate procedure, is designed to secure the just, speedy and inexpensive determination of claims.

Fourteenth Amendment to the United States Constitution. Specifically, Petitioner argues that the 30 day limitation is "patently too short in the case of a foreign judgment when applied in a probate proceeding." (See Petition at p. 11.) Such an argument, unsupported by any citation to authority, reveals Petitioner's thorough misunderstanding of the Florida Probate laws governing the presentation of claims against an Estate.

As noted previously, Florida Statute 733.705 neither denies nor abridges the right of Petitioner to seek to enforce the Illinois divorce decree. Rather, this Statute simply enacts a procedure to be followed to enforce Petitioner's rights, if any, and if the limitation is reasonable it is constitutionally acceptable, as Petitioner acknowledges at pages 10 and 11 of her Petition. Moreover, the applicable limitation for the presentation of a claim is not thirty days, but rather Florida Statute 733.702 allows a claim period of three months following the first publication of the Notice of Administration, plus thirty days after an objection is filed pursuant to Florida Statute 733.705(2). (See Respondent's Appendix at p. A-1). Such a procedure reasonably contributes to the just, speedy and inexpensive administration of estates within the State of Florida. *Poncier v. State Department of Health and Rehabilitative Services*, 284 So. 2d. 463 (Fla.3d DCA 1973); *In Re Goldman's Estate*, 79 So. 2d. 846 (Fla.1955); and *In Re Jeffries' Estate*, 136 Fla. 410, 181 So. 833 (1938).

It is also important to note that Florida Rule of Civil Procedure 1.010 specifically provides that "the form, content, procedure and time in all special statutory proceedings shall be as provided by the Statute governing the proceedings, unless these rules provide to the contrary." (See Respondent's Appendix at p. A-4). In the case of a claim against an estate to which an objection has been filed, the Florida Rules of Civil Procedure do not alter or otherwise suspend the procedure set forth in Florida Statute 733.705(3) and Petitioner cannot now be heard to complain that the applicable procedures operate to deny Petitioner due process of law. Petitioner was fully aware of her rights and obligations

under the Florida Probate laws, having filed a Statement of Claim on July 21, 1981, with the Circuit Court for Collier County, Florida. After receiving notice of Respondent's objection to her claim, Petitioner chose to ignore the provisions of Florida Statute 733.705(3) and allowed nearly seven months to expire before commencing a suit upon her claim. Accordingly, the time limitations set forth in Florida Statute 733.705(3) did not operate to abridge Petitioner's due process rights under the Fourteenth Amendment to the U. S. Constitution.

III. FLORIDA STATUTE 733.705 IS APPLICABLE TO CLAIMS PRESENTED AGAINST A DECEDENT'S ESTATE, INCLUDING THOSE ARISING OUT OF A FOREIGN DIVORCE DECREE.

Petitioner's third and fourth "questions presented" to this Court fail to raise an issue within the scope of this Court's discretionary jurisdiction as set forth in 28 U.S.C. Section 1257 and Supreme Court Rule 17. At issue under Petitioner's third question is the relationship between Florida Statute 95.11(2) and Florida Statute 733.705(3), *a classic non-federal question which should not be reviewed by this Court*. Furthermore, even *assuming arguendo*, that Petitioner's third question does not fail to properly raise an issue within the scope of the Court's jurisdiction, it is clear that the lower state courts committed no error in applying Florida Statute 733.705(3) to Petitioner's claim for alimony payments filed against the Estate of Alfred C. West.

There can be no dispute that Florida Statute 95.11(2) is generally applicable to the commencement of a suit brought on a foreign judgment in order to establish or domesticate that judgment in the State of Florida. See, *American Fidelity Fire Insurance Company v. Paste-ups Unlimited, Inc.*, 368 F. Supp. 219 (S.D.N.Y. 1974); *United Stated v. Pearson*, 258 F.Supp. 686 (S.D.N.Y.1966); and *Milligan v. Wilson*, 130 So. 2d 644 (Fla. 2d DCA 1961). However, it is also settled that in seeking to enforce a

claim against an estate, a claimant must comply with those procedural rules and statutory provisions which limit and define the method for presentation and enforcement of rights against an estate, whether the same be enacted in the form of a set of rules or as specific statutory provisions. Florida Statute 733.705 is not in conflict with Florida Statute 95.11(2), but rather further defines and provides for an orderly procedure regarding the administration and litigation of claims against an estate. Special statutory proceedings take precedent over more general Statutes. See, Fla. R. Civ. Proc. 1.010. Petitioner cannot be heard to complain that Florida Statute 95.11(2) affords her a greater period of time in which to enforce a claim against the Estate of Alfred C. West.[6] To rule otherwise, is to disrupt the orderly and speedy administration of estates as provided by the Florida Legislature.

Petitioner cites *Lewis Marine Supply, Inc. v. Hurt*, 357 So. 2d. 252 (4th DCA 1978) in support of her contention that a claim for alimony payments, based upon her Illinois divorce decree, is not subject to Florida Statute 733.705. The facts in *Lewis Marine Supply, Inc.*, are easily distinguishable from those presented herein. In *Lewis Marine Supply, Inc.*, a complaint to enforce a contract for the redemption of stock was dismissed by the Circuit Court on the grounds that it contained no allegation of compliance with Florida Statute 733.702(1), the Statute which sets forth a limitation on the presentation of claims. On appeal, the District Court of Appeals reversed and held that no such allegation was necessary in order to state a cause of action. Further, the Court

[6] Petitioner,s argument would result in holding estates open for five years pending the commencement of a suit on any known or unknown foreign judgment to the detriment of the estate's heirs, beneficiaries and creditors. Such an absurd proposition conflicts with Florida Statute 733.901 which mandates that all estates be closed within one year from the date letters of administration are issued by the Circuit Court having jurisdiction. (See Respondent's Appendix at p. A-2).

noted that the cause of action did not appear to come within the purview of Section 733.702(1). Unlike Petitioner's claim for alimony payments, the complaint filed in *Lewis Marine Supply, Inc.*, did not present a claim against an Estate. Rather, the Plaintiffs therein sought to enforce a contract for the redemption of stock. Furthermore, the latter case involved Florida Statute 733.702(1), and not Florida Statute 733.705. This distinction is important since Florida Statute 733.702 is a "non-claim statute" and Florida Statute 733.705 operates as a rule of judicial procedure.[7] Accordingly, Petitioner's reliance upon *Lewis Marine Supply, Inc., v. Hurt, supra*, is misplaced.

IV. THE LOWER STATE COURTS DID NOT COMMIT REVIEWABLE ERROR BY REFRAINING FROM A DISCUSSION OF THE FULL FAITH AND CREDIT CLAUSE.

It is difficult to comprehend Petitioner's allegation of error under her third "question presented" to this Court. Equally confusing is Petitioner's diatrabe regarding her fourth "question presented". Apparently, Petitioner infers fault with Florida's judicial system of review even though the State's circuit and appellate courts afforded Petitioner an opportunity to be heard on any Constitutional question involving the Full Faith and Credit Clause. While none of the lower court decisions expressly discuss the constitutional issue raised by Petitioner, it is reasonable, indeed only logical, to conclude that such arguments were rejected by implication.

Petitioner next suggests that in refusing to hear her appeal, the Florida Supreme Court failed to follow the state's constitution

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[7] See court's discussion in *In Re Goldman's Estate*, 79 So.2d 846, 847 (1955). (Court construed Florida Statute 733.16 and 733.18(2), predecessors to 733.702 and 733.705 respectively).

regarding the high court's jurisdiction. In support of her claim Petitioner cites a string of pre-April 1, 1980 cases construing former Section 3(b)(1) of Article V of the Florida Constitution which provided that:

> "B...Jurisdiction - The Supreme Court:
>
> 1. Shall hear appeals from final judgments of trial courts imposing the death penalty and from orders of trial courts and decisions of District Courts of Appeal initially and directly passing on the validity of a state statute or a federal statute or treaty, or construing a provision of the State or Federal Constitution.

The above quoted provision of the State Constitution was amended, effective April 1, 1980, to read as follows:

> (B) *Jurisdiction - The Supreme Court*
>
> (1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of District Courts of Appeal declaring invalid a state statute or a provision of the state constitution...

As can be seen from reviewing Section 3(b)(1), effective April 1, 1980 and former Section 3(b)(1), this particular provision underwent a dramatic change. The right of a direct appeal to the Florida Supreme Court from Orders of trial courts initially passing on the validity of a state statute or a federal statute, or construing a provision of the State or Federal Constitution, has been substantially revised. Such an appeal must now be taken to the District Court of Appeals as was done by Petitioner in the instant case. Accordingly, the cases cited by Petitioner at pages 12 and 13 of her Petition no longer state the law with respect to the Florida Supreme Court's mandatory jurisdiction. Furthermore, there was no error by the Florida Supreme Court in refusing to hear Petitioner's Appeal as the District Court of Appeal,in affirming the orders of the Circuit Court, decided the matter without rendering an opinion. See *Jenkins v. State*, 385 So.2d 1356 (Fla 1980). Thus, Petitioner's contentions that a constitutional issue was ignored by the lower state courts and that the Supreme Court of Florida improperly refused to hear petitioner's appeal are un-

meritorious. Accordingly, Petitioner's petition for a Writ of Certiorari to the Supreme Court of Florida should be denied.

V. THE INSTANT APPEAL IS NOT RIPE FOR REVIEW SINCE PETITIONER HAS FILED AN ACTION TO ENFORCE HER CLAIM AGAINST THE ESTATE OF ALFRED C. WEST IN THE U.S. DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA.

Aside from the arguments set forth above, Respondent submits that this appeal is not ripe for review because there currently is pending before the U.S. District Court, Southern District of Florida, (Case No. 82-2087-CN-ALH), an action by petitioner to enforce her demand for alimony payments against the estate of Alfred C. West. (See Petition at p.9) Said action involves the same underlying claim as that presented herein and stems from the divorce decree entered by the Superior Court of Cook County, Illinois on October 16, 1963. Accordingly, Respondent submits that this appeal is not ripe for review herein and petitioner's request for a Writ of Certiorari to the Florida Supreme Court should be denied.

CONCLUSION

For all of the reasons stated above, Respondent respectfully prays that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

733.702 Limitations on presentation of claims

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, actions founded on fraud or other wrongful act or omission of the decedent, shall be binding on the estate, on the personal representative, or on any beneficiary, unless presented:

Amended by Laws 1981, c. 81-27, § 4, eff. Oct. 1, 1981.

(a) Within 3 months from the time of the first publication of the notice of administration, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or he may file a proof of claim of all claims he has paid or intends to pay.

(b) Within 3 years after the decedent's death, if notice of administration had not been published.

(2) No cause of action heretofor or hereafter accruing, including, but not limited to, actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is filed in the manner provided in this part and within the time limited.

(3) Nothing in this section affects or prevents:

(a) A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent.

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by the casualty insurance.

(c) The filing of a claim by the Department of Revenue subsequent to the expiration of 3 months from the publication of the notice of administration as provided in paragraph (1)(a), provided it does so file within 30 days after the filing of the inventory by the personal representative.
Added by Laws 1980, c. 80-127, § 2, eff. July 1, 1980.

733.708 Compromise

When a proposal is made to compromise any claim, whether in suit or not, by or against the estate of a decedent or to compromise any question concerning the distribution of a decedent's estate, the court may enter an order authorizing the compromise if satisfied that the compromise will be for the best interest of the beneficiaries. The order shall relieve the personal representative of liability or responsiblity for the compromise. Claims against the estate may not be compromised until after the time for filing objections to claims has expired. Notice must be given to those who have filed objection to the claim proposed to be compromised.

733.901 Distribution; final discharge

(1) When a personal representative has completed administration except for distribution, he shall file a final accounting and a petition for discharge that shall contain:

(a) A complete report of all receipts and disbursements since the date of the last annual accounting or, if none, from the commencement of administration.

(b) A statement that he has fully administered the estate by

making payment, settlement, or other disposition of all claims and debts that were presented and the expenses of administration.

(c) The proposed distribution of the assets of the estate.

(d) Any prior distributions that have been made.

(e) A statement that objections to this report or proposed distribution of assets be filed within 30 days.

The final accounting and petition for discharge shall be filed and served on all interested persons within 12 months after issuance of letters for estates not required to file a federal estate tax return, otherwise 12 months from the date the return is due, unless the time is extended by the court for cause shown after notice to interested persons. The petition shall state the status of the estate and the reasons for the extension.

(2) If no objection to the accounting or petition for discharge has been filed within 30 days from the date of service of copies on interested persons, or if service has been waived, the personal representative may distribute the estate according to the plan of distribution set forth in the petition without a court order. The assets shall be distributed free from the claims of any interested person and, upon receipt of evidence that the estate has been properly distributed and that claims of creditors have been paid or otherwise disposed of, the court shall enter an order discharging the personal representative and releasing the surety an any bond.

(3) If an objection to the petition for discharge has been filed within the time allowed, the court shall determine the plan of distribution and, upon receipt of evidence that the estate has been properly distributed and that claims of creditors have been paid or otherwise disposed of, the court shall enter an order discharging the personal representative and releasing the surety on any bond.

(4) The 30-day period contained in subsection (2) may be

waived upon written consent of all interested persons.

(5) The discharge of the personal representative shall release the personal representative of the estate and shall bar any action against the personal representative, as such or individually, and his surety.

Rule 1.010. Scope and Title of Rules

These rules apply to all actions of a civil nature and all special statutory proceedings in the circuit courts and county courts except those to which the probate and guardianship rules or the summary claims procedure rules apply. The form, content, procedure and time for pleading in all special statutory proceedings shall be as prescibed by the statutes governing the proceeding unless these rules specifically provide to the contrary. These rules shall be construed to secure the just, speedy and inexpensive determination of every action. These rules shall be known as the Florida Rules of Civil Procedure.

Amended effective Oct. 1, 1968 (211 So.2d 206); Oct. 9, 1980, effective Jan. 1, 1981 (391 So.2d 165).